

# **Gujarat AAR holds sale of plots with primary amenities as provision of services, liable to GST**

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## Summary

The Gujarat Authority for Advance Ruling (AAR), in a recent case, has held that GST is applicable on sale of plot of land with primary amenities such as, drainage line, waterline, electricity line, land levelling, provided by the applicant. The AAR further stated that sale of developed plot is not equivalent to sale of land but tantamount to rendering of service and hence liable to GST.

## Facts of the case

- The applicant<sup>1</sup> has a vacant land, which it intends to sell as individual plots to different buyers without any construction on the same. However, being a mandatory requirement of the Zila Panchayat, the applicant shall also provide primary amenities along with the land such as, sewerage and drainage lines, water line, electricity line, land levelling for road, pipeline facilities for drinking water, streetlights, telephone line.
- The applicant sought an advance ruling on the applicability of GST on sale of

the plot of land along with the aforesaid primary amenities.

## Gujarat AAR's observations and ruling

- **Exclusive sale of land excluded under GST:** The AAR perused provisions<sup>2</sup> of the GST law and observed that a transaction of sale of land shall be out of GST-net if the activity is exclusively dealing with transfer of title or transfer of ownership of land or plot.
- **Sale price includes cost of amenities also:** The sellers generally charge the rates on super built-up basis, which includes the area used for common

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<sup>1</sup> M/s Shree Dipesh Anilkumar Naik

<sup>2</sup> Sr No. 5 to Schedule III of the Central and Goods and Service Tax (CGST) Act, 2017

amenities, roads, water tank and other infrastructure, on a proportionate basis.

In the present case also, sale price includes the cost of the land as well as the cost of common amenities on a proportionate basis.

- **Rendering of service:** The above indicates that sale of developed plot is not equivalent to sale of land but is a different transaction. Sale of such developed plot tantamount to rendering of service<sup>3</sup>.

- **Leviable to GST:** In the instant case, the activity of the sale of developed plots would be covered under the clause **‘construction of a complex intended for sale to a buyer’**<sup>4</sup>. Accordingly, the said activity is covered under ‘construction services’ and GST is payable on the sale of developed plots.

## Our comments

The GST law specifically provides that sale of immovable property shall be outside its purview. However, the AAR has ruled that GST shall be leviable on the entire sale price treating it to be provision of service, which includes the value of land also. It is pertinent to note here that in the Supreme Court’s decision referred to by AAR, the buyers were identified, whereas in the present case, the applicant is developing the plots on his own. Thus, the ruling seems contrary to the settled legal position and the intention of the legislature.

It is pertinent to mention here that AAR’s decision is applicable only to the applicant, however, there is possibility that department may apply this ruling to issue demand notices in other cases as well. A clarification from the government on this issue will surely be helpful in avoiding future litigation on this account.

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<sup>3</sup> The AAR referred to Supreme Court’s decision in the case of M/s Narne Constructions P Ltd.

<sup>4</sup> Schedule II clause 5(b) to the CGST Act, 2017

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